

IOWA SUPREME COURT

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CLERK SUPREME COURT

**INSTRUCTIONS TO COMPENSATION COMMISSIONERS
FROM THE CHIEF JUSTICE**

You have been selected as members of the compensation commission. Pursuant to the provisions of Iowa Code section 6B.43 (2005), you are instructed as follows:

A. Duties of the Commission and Commissioners

1. Governmental units and certain utilities are authorized by state law to condemn private property for certain public uses and purposes. However, the Constitution prohibits the taking of private property for public use without just compensation. It is your duty to fix a just compensation for that taking or use. You shall arrive at such compensation in a fair and impartial manner and on an independent basis. No commissioner shall possess any interest in the proceeding, which would cause such person to render a biased decision.

2. Prior to the meeting of the commission, the commission or a commissioner shall not communicate with the applicant, property owner, or tenant, or their agents, regarding the condemnation proceeding. State law requires that a compensation commission meet in open session to view the property and to receive evidence, but the commission may deliberate in closed session.

When deliberating in closed session, the meeting is closed to all persons who are not commissioners except for personnel from the sheriff's office if such personnel are requested by the commission.

After deliberations commence, the commission and each commissioner is prohibited from communicating with any party to the proceeding, unless such communication occurs in the presence of or with the consent of the property owner and the other parties who appear before the commission. However, if the commission is deliberating in closed session, and after deliberations commence the commission requires further information from a party or a witness, the commission shall notify the property owner and the acquiring agency that they are allowed to attend the meeting at which such additional information shall be provided but only for the period of time during which additional information is being provided. The property owner and the acquiring agency shall be given a reasonable opportunity to attend the meeting.

The commission shall keep minutes of all meetings, which minutes are a public record open to public inspection. The minutes are required to show the date, time, and place of each meeting; the

members present; the action taken at each meeting; the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present must be made public at the open session. If a vote is taken by the commission during closed session deliberations, the commission must reconvene in open session at the close of its deliberations and the vote of each member during the closed session must be made public. The minutes are public record open to public inspection.

3. You will be in the charge of the sheriff who will administer the oath to you and furnish transportation to and from the site of the property you are required to view.

B. Assessment of Damages

1. In determining fair market value of property, the commissioners shall not consider only the assessed value assigned to such property for purposes of property taxation. A property owner is entitled to be made whole, but double recovery is not allowed. When the entire property unit is taken, the measure of damages is the fair market value of the property immediately before the condemnation and before such value has been affected by the proposed public use. When only a portion of the property unit is taken, including certain rights such as an easement, the measure of damages is the difference between the fair market value of the property as a whole immediately before condemnation and before it has been affected by the proposed public use and the fair market value of the remaining property after the taking. Any advantage or benefit that may accrue to the remaining property by reason of the public use is not to be considered. Substantially the same measure applies to damages to a leasehold.

2. The commission shall consider and make allowance for any personal property that is damaged or destroyed or reduced in value, and for the cost of removing and replacing fences and removing buildings onto abutting property of the owner.

3. Allowance shall be made, if any, for the reasonable cost of moving an owner's or tenant's personal property from the land to be condemned to a point no greater than fifty (50) miles; but in any event, the damages awarded for moving shall not exceed five thousand dollars (\$5000) for each owner or tenant. An owner or tenant may apply for a separate moving award for the cost of moving personal property only if all other damages provided by law have been awarded and are insufficient to pay the owner's or tenant's reasonable costs of moving.

4. At the request of the condemner or the condemnee, the damages shall be divided into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages.

5. You shall file with the sheriff a written report containing your appraisal. All commissioners are required to sign the written report to the sheriff. Commissioners who do not concur with the majority of the commissioners may so note on the report.

6. In arriving at the fair market value of the property, you shall not consider evidence or information regarding prior negotiations between the parties. However, when you report the commission's award to the sheriff, if it exceeds one hundred and ten percent (110%) of the condemner's final offer, the sheriff will so advise you and you will then determine and fix reasonable attorney's fees and costs, including the reasonable cost of one appraisal, if any, incurred by the condemnee in presenting the condemnee's case before the commission.

These brief and general instructions do not contain all of the issues that might confront you. I advise you to carefully review applicable state laws relevant to your responsibilities and procedures and the condemnation matter before you. In addition, the position of the parties or their attorneys may be explained to you at the time of the hearing.

These instructions apply to applications of condemnation filed pursuant to section 6B.3 on or after July 14, 2006, except the authorization for award of costs for one appraisal under paragraph B.6 above shall apply to applications for condemnation filed pursuant to section 6B.3 and pending on July 14, 2006, if the commission has not filed an appraisal report with the sheriff before July 14, 2006.

Dated this 12th day of January, 2007.

SUPREME COURT OF IOWA

Marsha Ternus

Marsha K. Ternus
Chief Justice

Copies to:

All County Sheriffs

✓ Chief Judges of the Judicial Districts

✓ District Court Administrators